

## REMARKS

Claims 1-25, 29-34 and 37 are now pending in the present application. Claims 1 and 19 have been amended. Claims 26-28 have been canceled, claims 35 and 36 were previously cancelled by preliminary amendment, and no claims have been added.

Applicant has carefully studied the outstanding Office Action. The present Response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of this application is respectfully requested. No new matter has been added by any of the amendments to the specification. Applicant respectfully requests reconsideration and withdrawal of the Examiner's rejections in view of the foregoing amendments and following remarks.

### **Objection to the Drawings**

Examiner has objected to the drawings because Examiner contends that the "elements that actuate the latch" are not shown in the drawings submitted with the application. Respectfully, Examiner is incorrect. The latch actuating mechanisms are clearly shown in Figure 5 originally submitted with the application, and are referred to using the reference numerals **69** and **71**. Furthermore, in paragraph [0074] of the published U.S. Application for the present invention, the latch actuating mechanisms are identified as being depicted "schematically" in Figure 5 and referred to by the reference numerals **69** and **71**. Thus, the "elements that actuate the latch" are clearly shown and described in Figure 5 originally submitted with the application, and Applicant respectfully requests Examiner to withdraw this objection to the drawings.

To the extent Examiner believes that the latch actuating mechanisms must be depicted in all drawings that relate to each and every embodiment of the invention, Examiner is also incorrect. All that is required by 37 C.F.R. § 1.83(a) is that the "drawing" must show "every feature of the invention specified in the claims." Likewise, Section 1.83(a) does not require Applicant to show every feature of the invention in every drawing for every embodiment. In other words, it is enough under applicable law to depict the claim feature in one drawing. Applicant has clearly depicted the claim element in question in Figure 5 as originally submitted with the application, and Applicant respectfully requests Examiner to withdraw this objection to the drawings.

Furthermore, Applicant has stated in paragraph [0074] that the latch actuating mechanisms of the second embodiment (which is depicted in Figures 4 and 5) “operate in the same manner as for the cat flap of the first embodiment” (which is depicted in Figures 2 and 3) where Examiner evidently believes the latch actuating mechanisms are not shown. Thus, Applicant has already stated that the latch actuating mechanisms of the second embodiment operate in the same manner as they do in the first embodiment. This effectively incorporates the latch actuating mechanisms depicted in Figure 5 by reference into Figures 2 and 3. This is still more evidence that the latch mechanisms have been sufficiently depicted and described in the application as originally submitted, and Applicant respectfully requests Examiner to withdraw this objection to the drawings.

**Rejection under 35 U.S.C. § 112**

Claims 1-13, 34 & 35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

With respect to claims 1-13, 34 & 35, the Office Action in part states:

The claim(s) contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Page 12 of the Specification describes how the latch mechanism is to be actuated, but it is still not readily apparent to the Examiner how the latch is intended to be disabled. The drawing show no way of moving the latch. How is the latch to be depressed? Into what aperture or recess is it to move? Where is the biasing element mentioned in the Specification? Where do the actuating arms attach to the latch? How do they retract the latch mechanism? How do they release the latch mechanism?<sup>1</sup>

As an initial matter, claim 35 has been previously cancelled by preliminary amendment. Therefore, Examiner’s rejection under § 112, first paragraph as to claim 35 is moot and should be withdrawn.

Getting to the substance of Examiner’s rejection under Section 112, first paragraph,

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<sup>1</sup> Office Action Mailed October 11, 2006, page 2.

however, requires that all of these rejections be withdrawn. Confusingly, Examiner contends that “The drawings show no way of moving the latch.” However, as demonstrated previously, Applicant has already depicted all of the elements of a functioning latch mechanism in Figure 5. Actuating motors 73 are connected to mechanical arms 69 and 71, which are connected to the latches 62 and 64. It is clear from Figure 5 alone that the actuating motors engage and disengage the latches by moving the mechanical arms.

The Patent Office bears the initial burden of setting forth a reasonable explanation as to why a claim is not adequately enabled by the description of the invention in the specification, which includes providing sufficient reasons for doubting any assertions in the specification as to the scope of enablement. *In re Wright*, 999 F.2d 1557, 1561-62 (Fed. Cir. 1993); *In re Marzocchi*, 439 F.2d 220, 223, 169 U.S.P.Q. 367, 369 (CCPA 1971). As demonstrated above, all of the claims that refer to a latching mechanism are, at a bare minimum, enabled by the specification and the embodiment depicted in Figure 5, and Examiner has not even attempted to make a showing that this is not the case. Examiner has not shouldered the Patent Office’s burden of setting forth a reasonable explanation as to why the claims at issue are not adequately enabled by Figure 5, and Applicant respectfully requests that this rejection based on Section 112, first paragraph, be withdrawn.

More important, however, is the fact that Applicant has already pointed to a commercially available product that incorporates a latch mechanism that can be used with Applicant’s invention. Specifically, in paragraph [0064] of the published U.S. application, Applicant has pointed Examiner and one skilled in the art to the Model 500, Model 520 and Model 540 Battery Powered Cat Flaps available under the trademark “STAYWELL” for an example of an actuating mechanism for the pet door of Applicant’s invention. Indeed, in the same paragraph Applicant even states that the “construction and operation of such actuating arms is known to a person skilled in the art.” Surely the identification of an existing product which is commercially available at the time Applicant filed the application, and which incorporates a latching mechanism Applicant has already stated can be used with the present invention, is enough to satisfy the enablement requirement. After all, the test for enablement is whether the specification teaches those skilled in the art how to make and use the claimed invention without undue experimentation. *In re Vaeck*, 947 F.2d 488, 495, 20 U.S.P.Q.2d 1438, 1444 (Fed. Cir. 1991); *In re Wands*, 858 F.2d 731, 736-37, 8 U.S.P.Q.2d 1400, 1404 (Fed. Cir. 1988). Pointing one skilled in

the art to a working commercial embodiment of a claim feature is a commonly used and well understood patent application drafting technique routinely employed by patent applicants in order to enable their inventions. Here, Applicant has pointed to such a commercial embodiment of the latching mechanism of the present invention, which is more than enough to satisfy the enablement requirement. Applicant, therefore, respectfully requests that all of the rejections based on Section 112, first paragraph be withdrawn.

### **Rejection under 35 U.S.C. § 102**

Claims 19 and 26-33 are rejected under 35 U.S.C. 102(b), as being anticipated by Deighton (US 5,791,172).

With respect to claims 19 and 26-33, the Office Action in part states:

Deighton discloses a key 74 that could be adapted to be fitted to a pet collar. The key has a window that is substantially transparent to infrared radiation and contains an infrared radiation transmitter, a control circuit and a battery, as described in column 4 of the Specification. The key housing, shown in figure 8, includes a handle with an opening to receive a suspension element therethrough. The key is adapted to be suspended by the handle at an angle, can be adapted to fix a rigid suspension element at a selected angle, and sends out an infrared beam with a beam axis at an angle. The key hangs under its own weight. The control circuit is adapted to cause periodic transmission of a coded infrared signal from the infrared radiation transmitter. The reference thus reads on the claims.<sup>2</sup>

Applicant appreciates the opportunity to respond to Examiner's rejection, and respectfully submits that Deighton does not disclose a key **for a pet door**, which is claimed in claim 19. All of the dependent claims rejected by Examiner based on Deighton are similarly directed towards a key for a pet door. Deighton discloses a key for an electronically controlled security container for retaining a door key, the container being operable by an access control unit 74 which can emit a focused infra-red control signal. However, there is no disclosure in Deighton that the access control unit 74 would be suitable for use as a key for a pet door. In fact, the access control unit of Deighton would be unfit for use as a key for a pet door because the infrared signal in Deighton

is transmitted by pressing the buttons depicted in Figure 8. Applicant's invention, by contrast, is a key for a pet door that works without input from the user of the key (the pet). Thus, Deighton does not anticipate claim 19 or any of the claims depending from claim 19.

In order to more clearly distinguish Applicant's invention from Deighton, Applicant has amended claim 19 to include the claim limitations from claims 26-28, because Deighton clearly fails to disclose the claim limitations found in claims 26-28. The most specific claim limitation in claim 19, as currently amended, is that the infrared transmitter is "inclined at an angle of from 20 to 60° to the horizontal when the key is suspended by the suspension element." A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if **every element of a claimed invention is identically shown in that single reference**, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990) (emphasis added). In the office action, Examiner stated that the key of Deighton "can be adapted to fix a rigid suspension element at a selected angle." Respectfully, this is insufficient to satisfy the Section 102(b) test outlined in *In re Bond*. Specifically, the test is not whether a single reference's teachings "can be adapted" to read on the claim language; the test is whether all of the claim elements are "identically shown" in that reference. Here, Deighton does not disclose all of the elements of claim 19, as currently amended, by Examiner's own admission because the office action alleges that the teachings of Deighton "can be adapted" to arrive at Applicant's invention. Again, this is insufficient to satisfy the test of anticipation under Section 102.

Moreover, it is apparent from looking at Figure 8 of Deighton that the access control unit 74 in fact cannot be adapted to be suspended at a selected angular orientation. If the access control unit 74 depicted in Figure 8 of Deighton were suspended from the open ring near the bottom, it would hang straight down towards the ground. Such an orientation is not a selected angular orientation as contemplated by Applicant's invention, nor is it "inclined at an angle of from 20 to 60° to the horizontal" as required under claim 19, as currently amended. Therefore, Applicant respectfully requests that the rejection of claim 19 and all claims that depend from claim 19, as being anticipated by Deighton be withdrawn.

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<sup>2</sup> Office Action mailed October 11, 2006, page 4.

## **Rejections under 35 U.S.C. § 103**

### **Claims 1-7, 9, 10 and 15**

Claims 1-7, 9, 10 and 15 are rejected under 35 U.S.C. 103(a), as being unpatentable over De La Cerda (US 5,992,096) in view of Harris (US 4,893,952).

With respect to claims 1-7, 9, 10 and 15, the Office Action in part states:

De La Cerda discloses a pet door comprising a pivotably mounted flap 8, a latch mechanism (18 and 20) that can bar the flap from moving in both directions, and a control mechanism (12, 22 and 27) for disabling the latch mechanism. The latch mechanism is located between the front and back sides of the flap, so that the latch does not extend out either way. The control mechanism is located above the door flap on one side, as are the electrical components of the control system. The pet wears a key 24 that emits a signal that unlatches the flap.

De La Cerda fails to disclose the control mechanism as being an infrared radiation detector. However, Harris teaches using an infrared radiation detector 10 to determine whether something has approached a door. The infrared radiation detector is located above the door, depends downwardly into an upper edge of the opening, has a conical infrared radiation receiving zone "A" with a beam angle of 60 degrees.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the pet door of De La Cerda with the infrared radiation detector of Harris, because an infrared radiation detector has an interchangeable purpose with a motion detector. It would be further obvious to mount the electrical components of the control system and the infrared radiation detector to a common circuit board, since both system and detector are located in the same place.<sup>3</sup>

Applicant appreciates the opportunity to respond to Examiner's rejections based on De La Cerda in view of Harris. Applicant first points out that claim 1 has been amended to more clearly claim Applicant's invention. Specifically, the language of claim 1 now indicates that the infrared

radiation detector is adapted to detect a modulated and encoded infrared radiation signal. This amendment did not enter any new matter because the specification as originally submitted, in paragraph [0071] of the published U.S. application, already states that the infrared receiver of the present invention unlocks the pet door when it detects a modulated and encoded infrared signal. Thus, claim 1, as currently amended, includes the limitation that the infrared radiation detector is adapted to detect a modulated and encoded infrared radiation signal.

All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Because De La Cerda does not disclose the use of an infrared radiation detector, Examiner has relied on Harris to provide the missing infrared radiation detector. However, Applicant's current amendment to claim 1 specifies that the infrared radiation detector is adapted to detect a modulated and encoded infrared signal. Harris does not disclose such a radiation detector. The infrared radiation detector of Harris is a Passive Infrared (PIR) sensor, which is adapted to detect changes in temperature of the radiation impinging the sensor. (Harris, col. 5, ll. 43-55) The PIR sensor of Harris is, thus, not equivalent to the infrared detector of Applicant's invention, and Applicant respectfully requests that Examiner withdraw the rejections based on De La Cerda in view of Harris because all of the limitations of claim 1, as currently amended, are not provided by the combination.

In any event, one skilled in the art would have no motivation to combine the teachings of De La Cerda with the teachings of Harris. In response to an assertion of obviousness by the Patent Office, the applicant may attack the Patent Office's *prima facie* determination as improperly made out, present objective evidence tending to support a conclusion of nonobviousness, or both. *In re Frisch*, 972 F.2d 1260, 1265, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). A proper *prima facie* case of obviousness cannot be established by combining the teachings of the prior art absent some teaching, incentive, or suggestion supporting the combination. *In re Napier*, 55 F.3d 610, 613, 34 U.S.P.Q.2d 1782, 1784 (Fed. Cir. 1995); *In re Bond*, 910 F.2d 831, 834, 15 U.S.P.Q.2d 1566, 1568 (Fed. Cir. 1990). The mere fact that the prior art could be readily modified to arrive at the claimed invention does not render the claimed invention obvious; the prior art must suggest the desirability of such a modification. *In re Ochiai*, 71 F.3d 1565, 1570, 37 U.S.P.Q.2d 1127, 1131 (Fed. Cir. 1996); *In re Gordon*, 733 F.2d 900, 903, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). Merely stating

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<sup>3</sup> Office Action mailed October 11, 2006, page 5.

that the modification would have been obvious to one of ordinary skill without identifying an incentive or motivation for making the proposed modification is insufficient to establish a *prima facie* case. Furthermore, where the claims require that an element serve a specific purpose, the fact that a similar element was used for another purpose in the prior art or that the claimed element has a prior art attribute does not establish a *prima facie* case of obviousness. *In re Wright*, 848 F.2d 1216, 1219 (Fed. Cir. 1988).

Examiner contends that it would have been obvious to one skilled in the art “to provide the pet door of De La Cerda with the infrared radiation detector of Harris because an infrared radiation detector has an interchangeable purpose with a motion detector.” Respectfully, Examiner has misread the disclosure of De La Cerda, which makes Examiner’s *prima facie* obviousness case problematic in two ways. First, if Examiner is contending that replacing the entire pet detection system of De La Cerda with the PIR sensor of Harris produces Applicant’s invention, Examiner is both incorrect and has provided no motivation for such a combination. Section, if Examiner is contending that replacing the motion detector of De La Cerda with the PIR sensor of Harris produces Applicant’s invention, Examiner is incorrect.

Under the first interpretation above of Examiner’s comments above, whereby Examiner may be suggesting replacing the entire pet detection system of De La Cerda with the PIR sensor of Harris, Applicant’s invention is not arrived at for the reasons discussed previously. Claim 1, as currently amended, makes it clear that the infrared radiation detector of Applicant’s invention is adapted to detect a modulated and encoded infrared signal. This feature distinguishes Applicant’s infrared detector from the PIR sensor of Harris. More importantly, though, is the fact that there is no motivation to combine the PIR sensor with the teachings of De La Cerda in this manner. De La Cerda provides a motion detection system along with another system that verifies whether the animal it has detected is permitted access through the pet door. It accomplishes this verification following motion detection by sending out a “scanning signal” and receiving a “return signal from an encoded pet tag”. (De La Cerda, col. 2, ll. 48-55) If the return signal is not received, the door remains locked. In this way, only authorized pets are allowed through the door. If this entire verification system is replaced with the PIR sensor of Harris, the main thrust of the De La Cerda invention, namely to only allow access to authorized pets, would be completely undermined. The PIR sensor of Harris could potentially allow access to any pet or other animal that walked near the



pet door. Therefore, one skilled in the art would not combine the teachings of Harris with the teachings of De La Cerda in this manner.

Under the second interpretation of Examiner's rejection above, whereby only the motion detector of De La Cerda is replaced with the PIR sensor of Harris, Applicant's invention is not arrived at. This is, again, based on a correct reading of De La Cerda. Specifically, once the invention of De La Cerda detects motion from an animal, it sends out a "scanning signal" and receives a "return signal from an encoded pet tag" before it opens the door. Thus, if only the De La Cerda motion detector is replaced with the PIR sensor of Harris, the "scanning signal" and "return signal from an encoded pet tag" would still be present. This combination, of course, is not present in Applicant's claimed invention. First, the infrared detector of Applicant's invention is adapted to receive a modulated and encoded infrared signal; it does not send out a "scanning signal" and wait for a "return signal" from a pet tag after it detects motion. Second, Applicant's invention does not incorporate a motion detector at all. Instead, Applicant's invention only incorporates an infrared detector that is adapted to detect a modulated and encoded infrared signal. Applicant's detector does not detect motion.

Therefore, under either interpretation of Examiner's rejection outlined above, Examiner has not provided a proper prima facie case of obviousness, and Applicant respectfully requests that Examiner withdraw all of the rejections based on De La Cerda in view of Harris.

#### **Claim 8**

Claim 8 is rejected under 35 U.S.C. 103(a), as being unpatentable over De La Cerda (US 5,992,096) in view of Harris (US 4,893,952) and further in view of Kornbrekke (US 4,698,937).

With respect to claim 8, the Office Action in part states:

All of the elements of the instant application are discussed above except that De La Cerda fails to disclose the beam angle. However, Kornbrekke teaches an infrared beam angle of 80 degrees, which is about 90 degrees. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the pet door of De La Cerda in view of Harris with the beam angle of Kornbrekke, since the wide angle provides a receiving zone wide enough to interact with any infrared

transmission in the area.

Applicant appreciates the opportunity to respond to Examiner's rejection of claim 8. As described above, there is no motivation to combine the teachings of De La Cerda with the teachings of Harris, and the combination of De La Cerda and Harris does not arrive at Applicant's claimed invention. Specifically, Applicant's invention includes an infrared radiation detector that is adapted to detecting a modulated and encoded infrared signal, which is not taught or disclosed in De La Cerda or Harris. For these reasons alone, Applicant respectfully requests that Examiner withdraw this rejection of claim 8.

Furthermore, there is no motivation to combine Kornbrekke with De La Cerda for the same reasons there is no motivation to combine Harris with De La Cerda. Specifically, De La Cerda provides limited access to pets with the appropriately coded pet tag. The automatic door of Kornbrekke provides no way of distinguishing between the motion of different objects sensed passing near the door. If one of the beams of Kornbrekke is broken by any moving object, the door opens. Kornbrekke makes no distinction between different objects, which is diametrically opposed to the teachings of De La Cerda. De La Cerda only grants access to specific pets that are wearing a correctly coded pet tag. Thus, there would be no motivation to combine the teachings of Kornbrekke with De La Cerda, and Applicant respectfully requests that Examiner withdraw this rejection of claim 8.

#### **Claim 11**

Claim 11 is rejected under 35 U.S.C. 103(a), as being unpatentable over De La Cerda (US 5,992,096) in view of Harris (US 4,893,952) and further in view of Miconi (US 5,946,855).

With respect to claim 11, the Office Action in part states:

All of the elements of the instant application are discussed above except that De La Cerda fails to disclose that the control system includes an actuator motor. However, Miconi teaches using an actuator motor 66 to operate a pet door 50. The motor is activated by an infrared sensor 68. It would be obvious to one of ordinary skill in the art at the time of the invention to provide the pet door of De La Cerda with the actuator motor of Miconi, since motors

provide a reliable way to operate doors.

Applicant appreciates the opportunity to respond to Examiner's rejection of claim 11. As described above, there is no motivation to combine the teachings of De La Cerda with the teachings of Harris, and the combination of De La Cerda and Harris does not arrive at Applicant's claimed invention. Specifically, Applicant's invention includes an infrared radiation detector that is adapted to detecting a modulated and encoded infrared signal, which is not taught or disclosed in De La Cerda or Harris. For these reasons alone, Applicant respectfully requests that Examiner withdraw this rejection of claim 11.

Moreover, combining Miconi with De La Cerda and Harris do not arrive at Applicant's claimed invention. Specifically, Miconi uses an actuating motor to open and close its pet door. Applicant's invention, by contrast, uses an actuating motor to lock and unlock the latching mechanism of its pet door. Therefore, combining Miconi with De La Cerda and Harris would not arrive at applicant's invention, namely a pet door with an infrared radiation detector that is adapted to detecting a modulated and encoded infrared signal and an actuating motor for actuating the latch mechanism (ie. locking and unlocking the door). The suggested combination would instead provide a pet door with a passive infrared sensor (which does not distinguish between different animals) and an actuating motor that physically opens and closes the pet door. Thus, Applicant respectfully requests that this rejection of claim 11 be withdrawn because combining Miconi with De La Cerda and Harris does not arrive at the invention of claim 11.

#### **Claims 12-14 and 35**

Claims 12-14 and 35 are rejected under 35 U.S.C. 103(a), as being unpatentable over De La Cerda (US 5,992,096) in view of Harris (US 4,893,952) and further in view of Engle (U.S. Application 2002/0110373).

With respect to claims 12-14 and 35, the Office Action in part states:

All of the elements of the instant application are discussed above except that De La Cerda fails to disclose an attenuating device for ambient infrared radiation. However, Engle teaches using a filter 35 made of an infrared absorbing material to permit transmission

therethrough of only a selected range of wavelengths. It would be obvious to one of ordinary skill in the art at the time of the invention to provide the pet door of De La Cerda with the attenuating device of Engle, since without an attenuating device the pet door might open due to ambient radiation when the pet is not even present, which would leave the door open to other animals or intruders.

Applicant appreciates the opportunity to respond to Examiner's rejection of claims 12-14 and 35. Respectfully, claim 35 has been previously cancelled, and is no longer pending in the present application. Thus, Examiner's rejection of claim 35 is moot and should be withdrawn.

Furthermore, as described above, there is no motivation to combine the teachings of De La Cerda with the teachings of Harris, and the combination of De La Cerda and Harris does not arrive at Applicant's claimed invention. Specifically, Applicant's invention includes an infrared radiation detector that is adapted to detecting a modulated and encoded infrared signal, which is not taught or disclosed in De La Cerda or Harris. For these reasons alone, Applicant respectfully requests that Examiner withdraw this rejection of claim 12-14.

Moreover, Examiner's purported reason for combining Engle with De La Cerda and Harris is a classic case of impermissibly reading Applicant's teachings into the prior art. *Panduit Corp. v. Denison Mfg. Co.*, 810 F.2d 1561, 1575 n. 29, 1 U.S.P.Q. 1593, 1602 n. 29 (Fed. Cir. 1987) (citing need to "guard against hindsight and the temptation to read the inventor's teachings into the prior art"). In paragraph [0068] of Applicant's published U.S. application, Applicant gives the very justification relied upon by Examiner for combining Engle with De La Cerda and Harris. However, there is no suggestion within De La Cerda or Harris that an optical filter would be beneficial, which would be required under applicable patent law for a proper obviousness rejection. This is especially true for this particular rejection because the Engle patent is related to a field of endeavor wholly unrelated to even the extremely broad category of door operation. Applicant is hard pressed to find any motivation whatsoever to combine Engle, which is directed to a button for a camera, with the teachings of De La Cerda, which is directed to a pet door. Therefore, Examiner is requested to withdraw the rejection of claims 12-14.

#### **Claims 16 and 18**

Claims 16 and 18 are rejected under 35 U.S.C. 103(a), as being unpatentable over De La Cerda (US 5,992,096) in view of Harris (US 4,893,952) and further in view of Green (U.S. 4,776,133).

With respect to claims 16 and 18, the Office Action in part states:

All of the elements of the instant application are discussed above except that De La Cerda fails to disclose the pet flap being substantially transparent to infrared radiation. However, Green teaches using a clear pet flap 14 in a pet door. It would be obvious to one of ordinary skill in the art at the time of the invention to provide the pet door of De La Cerda with the clear flap of Green, since a substantially transparent flap allows infrared radiation to pass through and be received by an infrared radiation detector.

Applicant appreciates the opportunity to respond to Examiner's rejection of claims 16 and 18. As described above, there is no motivation to combine the teachings of De La Cerda with the teachings of Harris, and the combination of De La Cerda and Harris does not arrive at Applicant's claimed invention. Specifically, Applicant's invention includes an infrared radiation detector that is adapted to detecting a modulated and encoded infrared signal, which is not taught or disclosed in De La Cerda or Harris. For these reasons alone, Applicant respectfully requests that Examiner withdraw this rejection of claims 16 and 18.

Moreover, the teaching of "transparent plastics material" for the flap in Green appears to be superfluous. Green discloses a pet door that is manually locked and unlocked. Having a transparent flap on such a door would serve no useful purpose with regards to the Green invention, although it may allow the pet to see into or out of the door. Therefore, Examiner has again read Applicant's teachings into the prior art. In determining obviousness, an applicant's teachings may not be read into the prior art. *Panduit Corp. v. Denison Mfg. Co.*, 810 F.2d 1561, 1575 n. 29, 1 U.S.P.Q. 1593, 1602 n. 29 (Fed. Cir. 1987) (citing need to "guard against hindsight and the temptation to read the inventor's teachings into the prior art"). Nowhere is it suggested in the prior art that a clear flap would allow infrared radiation to pass through and be received by an infrared radiation detector on the other side of the door, which would unlock the pet door, as is taught by Applicant's invention. Where the claims require that an element serve a specific purpose, the fact that a similar element was used for another purpose in the prior art or that the

claimed element has a prior art attribute does not establish a *prima facie* case of obviousness. *In re Wright*, 848 F.2d 1216, 1219 (Fed. Cir. 1988). Therefore, the simple fact that Green disclosed a transparent door, without more, does not establish a proper case of obviousness. Applicant, thus, respectfully requests that Examiner withdraw the rejection of claims 16 and 18.

#### **Claim 17**

Claim 17 are rejected under 35 U.S.C. 103(a), as being unpatentable over De La Cerda in view of Harris and further in view of Green and Miconi. "All elements of the instant application are discussed above."

Applicant appreciates the opportunity to respond to Examiner's rejection of claim 17. As described above, there is no motivation to combine the teachings of De La Cerda with the teachings of Harris, and the combination of De La Cerda and Harris does not arrive at Applicant's claimed invention. Specifically, Applicant's invention includes an infrared radiation detector that is adapted to detecting a modulated and encoded infrared signal, which is not taught or disclosed in De La Cerda or Harris. For these reasons alone, Applicant respectfully requests that Examiner withdraw this rejection of claim 17.

Moreover, combining Miconi with De La Cerda and Harris does not arrive at Applicant's claimed invention. Specifically, Miconi uses an actuating motor to open and close the pet door. Applicant's invention, by contrast, uses an actuating motor to lock and unlock the latching mechanism. Therefore, combining Miconi with De La Cerda and Harris would not arrive at applicant's invention, namely a pet door with an infrared radiation detector that is adapted to detecting a modulated and encoded infrared signal and an actuating motor for actuating the latch mechanism (ie. locking and unlocking the door). The suggested combination would instead provide a pet door with a passive infrared sensor (which does not distinguish between different animals) and an actuating motor that physically opens and closes the pet door. Green is equally unavailing with regards to an obviousness rejection, as detailed previously. Thus, Applicant respectfully requests that this rejection of claim 17 be withdrawn.

### Claims 20, 22 and 23

Claims 20, 22 and 23 are rejected under 35 U.S.C. 103(a), as being unpatentable over Deighton in view of De La Cerda.

With respect to claims 20, 22 and 23, the Office Action in part states:

All elements of the instant application are discussed above except that Deighton does not specify that the key depends downwardly from a pet collar or the beam angle of the infrared transmission. However, De La Cerda teaches using a key on a pet collar, shown in Figure 5, and also teaches a beam angle of 60 degrees. It would be obvious to one of ordinary skill in the art at the time of the invention to provide the key of Deighton with the pet collar and beam angle of De La Cerda, since the pet collar is a secure, easy way to attach the key to a pet, and since a 60 degree angle provides a wide transmission area to lessen the chance that the pet will not be standing in the correct location to interact with the infrared receiver.

Applicant appreciates the opportunity to respond to Examiner's rejection of claims 20, 22 and 23. Respectfully, with regards to claim 20, De La Cerda does not teach a key with a window "in a downwardly directed orientation." Examiner has relied solely on Figure 5 of De La Cerda for this proposition. Respectfully, Figure 5 does not depict a window anywhere, nor does it specify that the window is in a downwardly directed orientation. In fact, the pet tag depicted in Figure 5 of De La Cerda is a square. If the window is located near its reference numeral 24, the window would actually be upwardly facing. Importantly, nothing in the specification of De La Cerda sheds any light on this question. The absence of a window in Figure 5, and the uncertainty regarding the location of any imagined window means that Examiner has not satisfied the Patent Office's initial burden of providing a prima facie case of obviousness. Therefore, Applicant requests that Examiner withdraw this rejection of claim 20.

With regards to claim 22, De La Cerda does not teach a "beam angle with a total angular extent of from 30° to 90°." Again, nothing in Figure 5 of De La Cerda depicts what the total angular extent of the imagined beam angle would be. This is unsurprising because the dog Figure 5 is a simple sketch, and is clearly not detailed enough to provide the type of information

Examiner contends it provides. Similarly, with regards to claim 23, De La Cerda does not teach a “beam angle with a total angular extent of about 60°.” Examiner is reading too much into Figure 5 of De La Cerda in an attempt to reject claims 22 and 23. Therefore, Applicant requests that Examiner withdraw the rejection of claims 22 and 23.

#### **Claims 21 and 34**

Claims 21 and 34 are rejected under 35 U.S.C. 103(a), as being unpatentable over Deighton in view of De La Cerda and further in view of Harris. “All the elements of the instant application are discussed above.”

Applicant appreciates the opportunity to respond to Examiner’s rejection of claims 21 and 34. Respectfully, there is no motivation to combine Deighton with De La Cerda or Harris. As an initial matter, it should be noted that Deighton, De La Cerda and Harris all relate to completely different fields of endeavor, but Deighton is even further removed from De La Cerda than Harris. Deighton discloses an infrared electronic access device for a door key holder. The access device of Deighton requires manual inputs in order to function, as evidenced by the buttons depicted in Figure 8 of Deighton. Using a device requiring manual inputs would be of little use to a dog or cat, which are the intended users of the key in Applicant’s invention. Deighton, thus, teaches away from Applicant’s invention as claimed in claim 21.

It has already been demonstrated previously that there is no motivation to combine the teachings of De La Cerda with Harris, and that the combination of De La Cerda and Harris does not arrive at Applicant’s claimed invention. Specifically, Applicant’s invention includes an infrared radiation detector that is adapted to detecting a modulated and encoded infrared signal, which is not taught or disclosed in De La Cerda or Harris. For all of the foregoing reasons, Applicant respectfully requests that Examiner withdraw this rejection of claims 21 and 34.



#### Claims 24 and 25

Claims 24 and 25 are rejected under 35 U.S.C. 103(a), as being unpatentable over Deighton in view of Kornbrekke (US 4,565,029).

With respect to claims 24 and 25, the Office Action in part states:

All of the elements of the instant application are discussed above except that Deighton fails to disclose the beam angle's total angular extent. However, Kornbrekke teaches an angular extent of 20 degrees, which is about 24 degrees. It would be obvious to one of ordinary skill in the art at the time of the invention to provide the key of Deighton with the beam angle of Kornbrekke, since a small angle allows the key to interact with the receiver only when intended to; it keeps the pet door from opening whenever the pet is just walking nearby.

Respectfully, neither Deighton nor Kornbrekke teach a key for a pet door, which is claimed by Applicant in claims 24 and 25. For this reason alone, Applicant requests Examiner to withdraw this rejection of claims 24 and 25. Confusingly, Examiner has justified the combination of Kornbrekke with Deighton by stating "it keeps the pet door from opening whenever the pet is just walking nearby," when neither Kornbrekke nor Deighton discuss pets or pet doors. Again, Examiner is invited to withdraw the rejection of claims 24 and 25 because a prima facie case of obviousness has clearly not been made out.

#### Claim 37

Claim 37 was included with a preliminary amendment to Applicant's application. It is clearly shown in the published U.S. application, but in the instant office action, Examiner has not rejected this claim. If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985). Because Examiner has not produced a prima facie case of unpatentability as to claim 37, Applicant is entitled to the grant of a patent on claim 37, and looks forward to receiving notice that it is allowed.

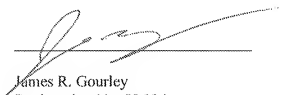
### CONCLUSION

In light of the amendments and the arguments made by Applicants above, Applicants submit that all pending claims are now in condition for allowance. Applicants respectfully request that Examiner withdraw all rejections with regard to the above-referenced claims in reliance on one or more of the grounds submitted by Applicants.

If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact James R. Gourley or Colin P. Cahoon at 972-367-2001.

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Respectfully submitted,



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